

**REMARKS**

Upon entry of the present invention, Claim 1 has been amended, Claim 3 has been cancelled, Claims 2 and 6-9 remain as originally presented, and Claim 5 remains as previously amended, and Claim 12 remains as previously presented.

The above-identified Office Action has been reviewed and the references carefully considered. In view hereof, the present amendment is submitted. It is contended that by the present amendment all bases of rejection set forth in the Office Action are traversed and overcome. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

**Objection to the Specification**

The Examiner has objected to the previously amended paragraph [0027], stating that it adds new matter to the application. In response, the Applicant is submitting herein a newly amended paragraph [0027]. This amended paragraph removes language indicating that it is preferred that the legs overlap so as to reduce the possibility of leaking.

Nonetheless, the Applicant contends that the originally submitted application discloses a medial portion of a leg which can both overlie and underlie the adjacent legs. As previously argued, Figure 1 discloses that a medial portion of a leg may both overlie and underlie the adjacent legs. The fact that Figure 1 is not to scale does not preclude it from disclosing an embodiment which it actually portrays.

Furthermore, the application, as originally submitted, discloses that the legs may be subject to a varying amount of overlap depending upon the size of the shingles used. Paragraph [0027] states that “overlap will vary between 1” and 7” between the consecutive

legs.” In addition, paragraph [0030] states that “the degree of overlap may vary depending on the need to accommodate various sizes of shingles.” Smaller shingles may necessitate an overlap of 5-7 inches, while large shingles may necessitate an overlap of only 1-4 inches. The application discloses that various amounts of overlap will occur, and it is therefore contemplated that a medial portion may exist which both overlies and underlies the adjacent legs.

Therefore, while Figure 1 is not to scale, it nonetheless discloses an embodiment of the invention as disclosed in the original application. Additionally, the original specification contemplated that varying amounts of overlap would occur. Thus, the Applicant contends that paragraph [0027] as presently submitted does not contain new matter.

**Claim Rejection 35 U.S.C. 102(e)**

The Examiner has rejected claims 1-3 and 5 under 35 U.S.C. 102(e) as anticipated by U.S. Patent Application No. 2003/0046878 to Zdeb. Section 102(e) states that a person shall not be entitled to a patent when:

the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The Applicant’s Attorney traverses the Examiner’s rejection. Under 35 U.S.C. 102, to constitute an anticipation all the claimed elements must be found in exactly the same function and united in the same way to perform the identical function in a single unit of the

prior art. Or stated differently, anticipation can only be established by a single prior art reference which discloses each and every element of the claimed invention.

Zdeb fails as a reference upon which to predicate an anticipation rejection. Zdeb discloses a succession of legs wherein the opposed leading and trailing edges of the successive legs overlies and underlies the next adjacent succeeding and preceding leg. The medial portions are not in overlying/underlying relation with the next adjacent legs.

In order to expedite prosecution, the Applicant has amended Claim 1 without prejudice. Claim 1 now recites the following limitation: “wherein at least some of the succession of legs form a set of three succeeding legs, the medial portion of the second leg overlying the second edge portion of the first leg and underlying the first edge portion of the third leg, and wherein the second edge portion of the first leg underlies the first edge portion of the third leg.” This relation is not disclosed in Zdeb.

The added limitation regarding the medial portion sufficiently distinguishes the present invention over Zdeb. Zdeb does not teach that the legs of the flashing strip contain a section which both underlies an adjacent leg and overlies an adjacent leg. Zdeb’s only disclosure of overlapping of legs is found in paragraph [0035], wherein it states that “[t]he flashing tabs 36 are preferably rectangularly shaped and are spaced apart in a parallel, overlapping fashion . . . as may best be seen in FIGS. 1b, 2a, and 2b.” Those three figures show the flashing tabs, or legs, having only minimal overlap, and certainly not containing a medial portion which both overlies an adjacent leg and underlies an adjacent leg.

Furthermore, for the reasons stated herein above, the Applicant has not included new matter in the application.

Therefore, Applicant contends that the currently amended Claim 1 now claims originally presented matter which is not anticipated by Zdeb. Accordingly, Applicant respectfully requests the Examiner to withdraw the rejection of Claim 1.

Applicant's Attorney submits that Claim 1 is patentable over the prior art.

Claims 2 and 5 depend upon the currently amended Claim 1, and are argued as patentable for the same reason that Claim 1 is patentable. Therefore, the Applicant respectfully requests the Examiner to withdraw the rejection of Claims 2 and 5 as well.

In order to expedite prosecution, and acting without prejudice, the Applicant has cancelled Claim 3.

### **Claim Rejection 35 U.S.C. 103**

The Examiner has rejected claims 6-9 under 35 U.S.C. 103(a) as being obvious over Zdeb in view of Bodycomb (U.S. Patent No. 5,414,964). 35 U.S.C. 103(a) states that:

[a] patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Applicant's Attorney traverses the Examiner's rejection. Claims 6-9 depend from Claim 1 which is currently amended and argued as allowable.

The Examiner contends that Bodycomb teaches a method of manufacturing a roof flashing strip which comprises extruding the roof flashing strip.

As argued above, the Applicant contends that Zdeb does not disclose a medial portion of a leg which both overlies and underlies the adjacent legs. Since it is argued that

Zdeb does not disclose this element, it is argued that Zdeb and Bodycomb, in combination, do not teach or suggest the limitations found in Claims 6-9.

Therefore the argument that it would have been obvious to one of ordinary skill in the art to combine the teachings of Zdeb and Bodycomb lacks merit because Zdeb and Bodycomb do not collectively teach the present invention. Modification of the references to meet the Applicant's claimed invention would not be obvious under 35 U.S.C. 103. As such, the Applicant respectfully requests that the Examiner withdraw the rejection of Claims 6-9.

The Examiner has also rejected Claim 12 as being obvious over international publication number WO/2002/063113 to Zdeb in view of U.S. Patent No. 4,941,304 to Lewellin. It is noted that the two Zdeb references cited herein (U.S. Patent Application No. 2003/0046878 and international publication number WO/2002/063113) appear to disclose identical information. As such, for the reasons stated herein above, the Applicant respectfully contends that WO/2002/063113 to Zdeb does not disclose a medial portion of a leg which both underlies and overlies adjacent legs.

It is noted that the Examiner states that Zdeb does not teach a base strip as found in Claim 12.

However, the Examiner contends that Lewellin teaches a base strip comprising an elongated member having a backing plate with a top strip and a bottom strip projecting outwardly therefrom and extending laterally along the backing plate, the top and bottom strips being inclined with respect to a vertical plane at an angle of at least one degree.

The Applicant respectfully contends that Lewellin does not teach all of the elements that the Examiner contends it does. It is noted that the insulation panel shown in Figure 3

of Lewellin is oriented on its face. In use, the insulation panel is positioned with members 42 at the top or bottom of the panel (col. 3, ln. 67-68). Furthermore, the Examiner contends that Lewellin's front wall 20 and back wall 21 disclose the top strip and bottom strip of Claim 12, respectively.

The Applicant respectfully contends that Lewellin does not have a top strip and bottom strip. More so, Lewellin does not have a top strip and a bottom strip which are inclined with respect to a vertical plane at an angle of at least one degree. First, the front wall and back wall of Lewellin ***extend*** along the vertical plane, and are thus incapable of being inclined with respect to it.

Secondly, even if the insulation panel in Lewellin was oriented as shown in Figure 3, Lewellin does not disclose the front wall and back wall being inclined with respect to a vertical plane. The Examiner cites column 2, lines 52-55 as disclosing this element. However, this portion of Lewellin states that "[t]he channel shape is defined by a front wall 20, a back wall 21 and a base wall 22, the base wall 22 being defined by (*sic*) web 12." This statement does not disclose the front wall or back wall being inclined with respect to the base wall or any other plane. Therefore, Lewellin does not disclose a top strip and a bottom strip, and it additionally does not disclose a top strip and a bottom strip which are inclined with respect to a vertical plane at an angle of at least one degree.

Furthermore, the Applicant respectfully contends that even if Lewellin did teach those elements, it would not have been obvious to one of ordinary skill in the art to combine them with Zdeb. First, Claim 12 is directed towards a roof flashing system, while Lewellin is directed towards an insulation panel. Second, in use the insulation panel is oriented

vertically. Third, the front and back walls of Lewellin are not inclined. Fourth, the distance between the front wall and the back wall is significantly greater than the thickness of a roofing shingle. Therefore, the Applicant respectfully contends that it would not have been obvious to one of ordinary skill in the art to: (1) look to an insulation panel for a solution to a roof flashing problem; (2) re-orient the members of the panel so that they do not extend in a vertical direction; (3) re-orient the front and back walls so that they are inclined with respect to a vertical plane; and (4) significantly shrink the overall size of the members so that they are appropriately sized for a roofing shingle.

In conclusion, the Applicant contends that Zdeb does not teach a medial portion of a leg which both overlies and underlies the adjacent legs, nor does Lewellin teach a top strip and bottom strip which are inclined with respect to a vertical plane. Therefore the argument that it would have been obvious to one of ordinary skill in the art to combine the teachings of Zdeb and Lewellin lacks merit because Zdeb and Lewellin do not collectively teach the roof flashing system found in Claim 12. Modification of the references to meet the Applicant's claimed invention would not be obvious under 35 U.S.C. 103. As such, the Applicant respectfully requests that the Examiner withdraw the rejection of Claim 12.

### **Conclusion**

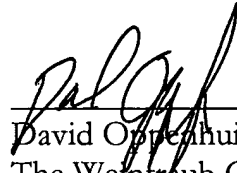
It is respectfully submitted by this amendment that all bases of rejection and objection have been traversed and overcome and thus, it is contended that in the absence of more pertinent art, the application has now been placed in a condition for allowance. A notice to this effect is, therefore, respectfully requested.

If the Examiner feels that prosecution of this application can be expedited, then he is courteously requested to place a telephone call to the Applicant's attorney at the number listed below.

This submission is being made in accordance with 37 C.F.R. § 1.34. The undersigned attorney is not an attorney of record, but is acting under the authority of attorney of record Arnold S. Weintraub (Reg. No. 25,523), who is currently unavailable to act on behalf of the applicant.

Respectfully submitted,

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